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Via Electronic Filing

Chief Judge Sue L. Robinson
United States District Court
District of Delaware
J. Caleb Boggs Federal Building
844 N. King Street, Lock Box 31
Wilmington, DE 19801

**RE: Connecticut Bank of Commerce v. The Republic of Congo,
Civil Action No. 05-762 SLR**

Dear Chief Judge Robinson:

We write in response to Mr. Grant's letter of earlier today regarding Af-Cap's Notice of Dismissal in the above-captioned case. CMS's view that it, a garnishee in this enforcement proceeding, has status as an adverse party is not supported by either the statutory language or the case law. The Southern District of New York has directly held that a garnishee is not an "adverse party" within the meaning of Rule 41(a)(1). *See Fantasy Shipping Pool, Ltd. v. Simatech Marine S.A.*, No. 01 CIV.10725ICSH, 2002 WL 1733662 at * 1- * 2 (S.D.N.Y. July 25, 2002). In fact, the adverse party, the judgment debtor Congo, has settled its dispute with Af-Cap. Accordingly, because the adverse party has not filed an answer or motion for summary judgment, Af-Cap's Notice is an appropriate vehicle to dismiss this matter.

Moreover, there is no statutory or other basis for CMS to be awarded fees in this action. CMS was a proper garnishee in this action and it only has itself to blame for electing to raise and litigate Congo's defenses.

Should Your Honor have any questions or concerns, counsel remain at the convenience of the Court.

Respectfully submitted,



Donald J. Detweiler (DE #3087)

cc: M. Duncan Grant, Esquire (CM/ECF)

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